IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Crl.Rev.Pet.No. 2697 of 2007()

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CRA.696/2004 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
CC.840/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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REVN. PETITIONER: APPELLANT/ACCUSED:

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JOSHI, S/O. KUTTAPPAN,
VADAKKEDATH HOUSE, METHALA, ANAPUZHA,
THRISSUR DISTRICT.

BY ADV. SMT.LATHA PRABHAKARAN
SRI.K.M.JAMALUDHEEN

RESPONDENTS: RESPONDENT/COMPLAINANT:

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STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V. RAMKUMAR, J.**

**Crl. R.P. No. 2697 OF 2007**

**Dated this the 24th day of July, 2007**

**O R D E R**

The revision petitioner, who is the accused in C.C.No.840/2000 on the file of the JFCM, Kodungallur, for offences punishable under sections 341 and 325 IPC, challenges the appellate conviction and sentence imposed on him for the offence under section 325 IPC. For the said conviction, he was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, to suffer simple imprisonment for six months.

2. The case of the prosecution can be summarised as follows:-

On 17.02.2000 at about 5.30 p.m. there was an altercation between PW2 and the accused. This was in respect of certain money payable by the accused to PW2. During the said altercation and the resultant scuffle, the left ear of PW2 was bitten by the accused resulting in PW2 losing a portion of his pinna. The accused has thereby committed offences punishable under

sections 341 and 325 IPC.

3. On the accused pleading not guilty to the charge framed against him by the trial court, the prosecution altogether examined seven witnesses as PWs 1 to 7 and got marked five documents as Exhibits P1 to P5.

4. After the close of the prosecution evidence, the accused was questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

5. When called upon to enter on his defence, the accused examined two witnesses as DWs 1 and 2 of whom DW1 is none other than the accused himself.

6. The learned JFCM, Kodungallur, after trial, as per judgment dated 5.11.2004 found the revision petitioner/accused guilty of offences punishable under sections 341 and 325 IPC and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, to suffer simple imprisonment for six months under section 325 IPC and to undergo simple

imprisonment for 15 days under section 341 IPC.

7. Aggrieved by the said conviction and sentence, the revision petitioner preferred Criminal Appeal No.696/2004 before the III Additional Sessions Judge(Adhoc)-I, Thrissur. As per judgment dated 30.4.2007, the lower appellate court acquitted the revision petitioner of the offence punishable under section 341 IPC but confirmed his conviction and sentence with regard to the offence punishable under section 325 IPC. It is the said conviction and sentence, which are assailed in this revision.

8. I heard the learned counsel appearing for the revision petitioner and the learned Public Prosecutor.

9. In support of the revision, the learned counsel for the revision petitioner made the following submissions before me:-

In the light of the finding of the lower appellate court that the prosecution has failed to prove the offence under section 341 IPC against the revision petitioner, the main fabric of the prosecution case has been destroyed. The evidence on record does not show as to who was the aggressor and, therefore, the revision petitioner was fully justified in taking up the defence of the right of private defence in the alternative. The prosecution witnesses including

PW2 were not placing the true facts before the court.

10. I am afraid that I cannot agree with the above submissions. Both the courts below have carefully appreciated the evidence on record to find that it was the accused who unprovocatedly bit the left ear of PW2 resulting in PW2 losing a portion of the pinna of his ear. The above conviction has been recorded after an appreciation of the oral and documentary evidence in the case and this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the said finding or to re-appreciate the oral evidence and come to a different conclusion even if it were possible. The conviction under section 325 IPC was, therefore, fully justified since the injury inflicted on PW2 is a grievous injury. The conviction is, accordingly, confirmed.

11. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. This is a case in which a portion of the pinna of the left ear of PW2 was lost on account of the act of biting by the accused. Both the courts below have been insensitive to the need to compensate the victim of the offence. Notwithstanding the pronouncement of the Apex court in ***Hari Krishnan and State of***

***Haryana Vs. Sukhbir Singh and others*** [AIR 1988 SC 2127] directing all criminal courts to liberally exercise the power under section 357(3) Cr.P.C., the courts below have been oblivious of the said judicial mandate. On the facts and circumstances of the case, I am of the view that penal servitude by way of incarceration of the revision petitioner is not warranted and that an appropriate direction to undergo imprisonment till the rising of the court and to pay a suitable amount by way of compensation will meet the ends of justice. Accordingly, for his conviction under section 325 IPC the sentence imposed on the revision petitioner by the court below is set aside and instead the revision petitioner shall suffer imprisonment till the rising of the court and shall also pay a sum of Rs.25,000/- (Rupees twenty five thousand only) to PW2 by way of compensation under section 357(3) Cr.P.C. The said compensation amount shall be paid within two months from today, failing which the revision petitioner shall undergo simple imprisonment for three months by way of default sentence.

This revision is disposed of as above.

**(V. RAMKUMAR, JUDGE)**

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